



## REPORT TO COUNCIL

### BUSINESS LICENSE HEARING MINUTES

MARCH 24, AND MAY 13, 2009

A Business License Hearing of the Council of the City of Vancouver was convened on Tuesday, March 24, 2009, and reconvened on Wednesday, May 13, 2009, at 9:30 a.m., in the Council Chamber, Third Floor, City Hall, to determine whether or not the 2009 City of Vancouver business license granted to Fox Enterprises Ltd. doing business as Fox Theatre (the 'Licensee'), for business premises located at 2321 Main Street, Vancouver, British Columbia (the "Premises") should be suspended or revoked. The minutes are consolidated for ease of reference.

**PRESENT:** Councillor Suzanne Anton, Chair  
Councillor Kerry Jang  
Councillor Heather Deal

**CITY CLERK'S OFFICE:** Denise Salmon, Meeting Coordinator (March 24)  
Pat Boomhower, Meeting Coordinator (May 13)

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*Following a request by the media to videotape the hearing, Tom Zworski, counsel for the City, noted that while cameras are traditionally not allowed at Business License Hearings, this decision is within Council's discretion. Counsel for the licensee advised that while his client would prefer cameras were not allowed, he had no legal objection to the use of cameras. The Panel agreed by consensus that cameras be allowed at this Business License Hearing on March 24 and a portion of the hearing on May 13, 2009.*  
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1. Fox Enterprises Ltd. dba Fox Theatre  
2321 Main Street

The Business License Hearing Panel had before it for consideration an Evidence Brief, prepared by the City of Vancouver's Legal Department, which contained the following material (*on file in the City Clerk's Office*) and the evidence of witnesses:

#### Tab

- 1 License & Inspections Department

Company Search - Fox Enterprises Ltd.  
Title Search - Siddoo Kashmir Holdings Ltd.  
Assessment Roll - 2321 Main Street  
Letter to Xiaohua Huang from Barb Windsor dated September 18, 2008  
Handwritten Notes dated September 25, 2008  
Letter to Barb Windsor from Xiaohua Huang dated September 30, 2008  
2009 Business License #09-139254 dated December 8, 2008 - Retail Dealer Food  
2009 Business License #09-146872 dated December 8, 2008 - Theatre  
Letter to Xiaohua Huang from Barb Windsor dated February 16, 2009

**2      Police Department**

Follow-up on Fox Cinema dated January 3, 2009  
Photograph of Fox Cinema and information  
CP Report #303244-2002 dated December 13, 2002  
CP Report #15616-2003 dated January 19, 2003  
GO Report #2003-28257 dated February 3, 2003  
GO Report #2004-91563 dated April 15, 2004  
GO & CP Report #2005-204052 dated August 14, 2005  
CP Report #69702-2006 dated April 4, 2006  
GO & CP Report #2006-73344 dated April 9, 2006  
CP Report #89988-2006 dated May 1, 2006  
SC VA Report #2008-438 dated January 26, 2008  
CP Report #85488-2008 dated May 10, 2008  
GO Report #2008-108684 dated June 12, 2008  
GO Report #2008-113762 dated June 12, 2008  
GO & CP Report #2008-171720 dated August 26, 2008  
GO Report #2008-168301 dated August 30, 2008  
CP Report #240190-2008 dated December 15, 2008  
CP Report #1885-2009 dated January 4, 2009

**3      Business Improvement Association (BIA)**

E-mail to Barb Windsor from Mark Jarvie dated September 5, 2008  
Letter to Dane Baspaly from Donna Partridge dated June 19, 2008  
Letter to Mark Jarvie from Dane Baspaly dated June 20, 2008  
Letter to Mark Jarvie from Amy Woods dated June 22, 2008  
Letter to Mark Jarvie from The Foundation dated June 22, 2008  
Letter to Mark Jarvie from Lark dated June 23, 2008  
Letter to Mark Jarvie from Aurora Bistro dated June 23, 2008  
Letter to Mark Jarvie from Uptown Barber dated June 23, 2008  
Letter to Mark Jarvie from Rath Art Supplies dated June 23, 2008  
Letter to Mark Jarvie from Mine: Style Source dated June 23, 2008  
Letter to Mark Jarvie from Gene Coffeebar dated June 23, 2008  
Letter to Mark Jarvie from East Vanity Parlour dated June 23, 2008  
Letter to Mark Jarvie from Kim Johnson dated June 23, 2008  
Letter to Mark Jarvie from Chopping Block dated June 23, 2008  
Letter to Mark Jarvie from Goh Ballet Academy dated June 23, 2008  
Letter to Mark Jarvie from Midtown Mailbox dated June 23, 2008  
Letter to Mark Jarvie from Best Western dated June 23, 2008  
Letter to Mark Jarvie from Chopping Block dated June 24, 2008

**4      Material from Craigslist**

July 21, 2008, 12:47 PM  
July 21, 2008, 6:38 PM  
August 10, 2008  
August 18, 2008, 2:54 PM  
August 18, 2008, 5:46 PM  
August 19, 2008

August 27, 2008  
August 31, 2008  
September 2, 2008  
September 3, 2008  
September 4, 2008  
January 3, 2009  
January 7, 2009  
January 9, 2009, 6:57 PM  
January 9, 2009, 11:24 PM  
January 10, 2009  
January 12, 2009  
January 15, 2009  
January 17, 2009, 6:22 PM  
January 17, 2009, 8:21 PM  
January 18, 2009  
January 20, 2009  
January 22, 2009  
January 24, 2009, 12:55 PM  
January 24, 2009, 12:58 PM  
January 26, 2009  
January 28, 2009, 11:39 AM  
January 28, 2009, 6:37 PM  
January 29, 2009, 10:07 AM  
January 29, 2009, 11:51 PM  
January 31, 2009  
February 3, 2009  
February 6, 2009

The Panel also had before it copies of correspondence received in regard to the Fox Theatre (*circulated at the March 24<sup>th</sup>*) and *Vancouver Police Department Occurrence Report* GO Report #2009-59328 dated April 14, 2009 (*circulated on May 13<sup>th</sup> meetings and on file*) and two document packages submitted by D. Stuart Gray, counsel for the Licensee (*circulated at the March 24<sup>th</sup> and May 13<sup>th</sup> meetings and on file*).

Tom Zworski, counsel, was present on behalf of the City of Vancouver. Xiaohua "Lisa" Huang, the Licensee, was present and represented by D. Stuart Gray, Esq., Harrop, Phillips, Powell & Gray. In addition, on May 13<sup>th</sup> Ms Huang was assisted by Amy Lee, registered Mandarin interpreter.

Mr. Zworski advised this matter had been referred to City Council by the Chief License Inspector pursuant to Section 278 of the Vancouver Charter which states that Council has broad powers to revoke, suspend or uphold a business license, and noted the need to consider the impacts on the neighbourhood in addition to the illegal activity on the Premises. He advised two licenses were before the Panel, one for the operation of the theatre, the other for retailer dealer - food. Mr. Zworski cautioned the Panel keep their personal view of pornography out of the Panel's decision and noted the rules of natural justice apply and if Council chooses to suspend or revoke the licenses, it must state the reasons for that decision.

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*At this point in the proceedings, the Chair requested the witnesses waiting to give evidence be requested to leave the Chamber prior to giving their evidence. Accordingly, all witnesses, currently not testifying, left the Chamber.*  
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Counsel for the Licensee objected to consideration of the Craig's List documents contained in the Evidence Brief, and submitted they were anonymous postings which could not be authenticated. Mr. Zworski advised a witness would authenticate same, and submitted this evidence is admissible and relevant to the Fox Theatre's reputation in the community. The Panel had no objection to use of these documents.

Before the Panel was the Notice of Hearing contained in the afore-mentioned Evidence Brief, which sets out the allegations that the Licensee has failed to properly manage the Premises by:

- (a) failing to exercise control of the Premises;
- (b) allowing illegal activity on the Premises; and
- (c) operating to the detriment of the neighbourhood.

In support of the allegations set out in the reports and evidence contained within the Evidence Brief, Mr. Zworski called the following witnesses:

March 24<sup>th</sup>

1. Cst. Mark Jarvie, VPD
2. Jim Dreichel, Mount Pleasant BIA
3. Natsumi Akatsuka
4. Alexander Greig
5. Barb Windsor, Chief License Inspector

May 13<sup>th</sup>

6. Const. Robert Hirst
7. Const. Brent Kazuta

Mr. Gray and the Panel also directed questions to the witnesses.

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*At this point in the proceedings on March 24<sup>th</sup>, the Panel agreed to take a short recess. The Panel recessed at 11: 18 a.m. and reconvened at 11:30 a.m. with the same members present.*  
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*During discussion of this item it was  
MOVED by Councillor Deal*

*THAT, under Section 2.3 (c) of the Procedure By-law, Council extend the length of the  
Business License Hearing by one hour or less.*

*CARRIED UNANIMOUSLY AND  
BY THE REQUIRED MAJORITY*  
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In support of the Licensee, Mr. Gray called the following witness on March 24<sup>th</sup>:

1. Xiaohua "Lisa" Huang, President, Fox Enterprises Ltd.

Mr. Zworski and the Panel also directed questions to the witness.

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*At this point in the proceedings, the Hearing recessed at 12:59 p.m. on March 24<sup>th</sup> and reconvened at 9:35 a.m. on May 13<sup>th</sup> with the same members present, as well as a Mandarin interpreter to assist Ms. Hwang and Mr. Wong.*  
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Mr. Gray, counsel for the licensee, and Mr. Zworski, counsel for the City, expressed concerns regarding cameras broadcasting the proceedings. The Panel agreed by consensus that cameras not be allowed during testimony from undercover officers at this Hearing on May 13, 2009.

Mr. Zworski and the Panel resumed directing questions to Ms. Hwang.

Mr. Gray continued with calling of the following witnesses in support of the Licensee:

May 13<sup>th</sup>:

2. John Robertson
3. Jim Wong, Part-time Employee, Fox Theatre

Mr. Zworski and the Panel also directed questions to the witnesses.

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*At this point in the proceedings on May 13<sup>th</sup>, the Panel recessed at 11:04 a.m. and reconvened at 11:16 a.m. with the same members present; at which time, the Chair confirmed that all cameras were off during the testimony of the next witnesses.*  
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In support of the allegations set out in the aforementioned reports and evidence, Mr. Zworski called rebuttal witnesses Constables Hirst and Kazuta on May 13, 2009.

Mr. Gray and the Panel also directed questions to the witness.

Mr. Zwoski submitted that the evidence presented at this Hearing accords with the allegations as set out in the evidence briefs, additional evidence circulated at the meeting and witness testimony, and sets out the legal test for Council to apply in determining whether or not the 2009 City of Vancouver business licenses granted to Fox Enterprises Ltd. doing business as Fox Theatre for business premises located at 2321 Main Street, Vancouver, British Columbia, should be suspended or revoked.

Mr. Zworski further noted that because the business operator has not exercised proper control over the business, illegal activities take place which then attracts a type of clientele and impacts the neighbourhood. He also submitted that after the March 24 portion of the hearing, two police officers found illegal activity on the premises on April 10, 2009, and did not observe any theatre employee doing the checks claimed by the operator.

Mr. Gray submitted that the licensee should be allowed to continue to hold its licenses subject to conditions such as inspections at certain time increments. Mr. Gray also submitted there has never been a ticket to the business or patron, or to anyone outside the business with regard to illegal activity. He further submitted that illegal smoking should be dealt with through the courts and fines, rather than revoking a business license. He stated management practises have improved and there was no independent inspection to evaluate what happens when someone complains. In addition, Mr. Gray submitted the evidence is not there to put the licensee out of business and employees out of work.

#### PANEL MEMBERS DISCUSSION

Prior to a decision on this matter, Panel members clarified the types of conditions which could be imposed on the existing license and whether the licensee was open to meet with the local Business Improvement Area (BIA). Panel members noted the business is a relic in a changing neighbourhood and that logs were being kept by the licensee. Discussion also included whether there is evidence the business is trying to stop the illegal activity. It was noted police have attended the premises on a number of occasions and control has not been sufficient, even after the March 24<sup>th</sup> portion of the Hearing.

MOVED by Councillor Deal

THAT the existing 2009 City of Vancouver business licenses granted to Fox Enterprises Ltd. doing business as Fox Theatre (the "Licensee"), for business premises located at 2321 Main Street, Vancouver, British Columbia (the "Premises") be amended to impose the following conditions:

- i.* THAT the Licensee conduct a physical check inside the auditorium (theatre) every half hour;
- ii.* THAT a written log of those checks be kept;
- iii.* THAT the Licensee offer to meet with the local Business Improvement Area (BIA) to discuss their concerns; and
- iv.* THAT the Licensee meet with the Chief License Inspector to discuss those concerns and what management changes be necessary to ensure that the impact to the neighbourhood is minimized.

CARRIED UNANIMOUSLY

The Panel recessed at 12:59 p.m. on March 24, 2009,  
and  
adjourned at 12:42 p.m. on May 13, 2009.